Re YEO JIN GUAT (No. 1)

[O. C. J. (Whitton J.) May 21, 1954]

[Singapore — Bankruptcy Motion No. 85 of 1952]

Bankruptcy Ordinance (Cap. 45), s. 114(c) — Debts alleged to be contracted without reasonable expectation of being able to pay them must be specified in the charge.

This was a motion to commit the bankrupt to prison under the provisions of s. 114 of the Bankruptcy Ordinance. The material part of the charge reads as follows:— "that he contracted between 1st January 1952 and the 3rd of June that year, an aggregate debt of $1,036,467 provable in bankruptcy, without any reasonable ground of expectation of being able to pay it". It was contended on behalf of the bankrupt that the sum in the charge was in fact an aggregate of 1,200 separate debts.

Held: in cases of this kind the particular debts should be specified.

Cases referred to:—

(1) *Re Chops Low Ban Chuan etc., ex parte Lim Eng Hoe* (1933) M.L.J. 286.

(2) *Re Mohamed Yusoff Meera Hussein & Anor.* (1954) M.L.J. 45.

(3) *Poh Eng Lian v. Official Assignee* (1947) M.L.J. 126.

BANKRUPTCY.

N. L. Macassey for the bankrupt.

W. G. Alcock, Official Assignee in person.

Cur. Adv. Vult.

Whitton J.: — Mr. Macassey for the bankrupt has raised a preliminary objection that the main charge in the Motion is bad on the ground that it refers to an aggregate debt. The material part of the charge reads "that he contracted between 1st January 1952 and the 3rd of June that year, an aggregate debt of $1,036,467 provable in bankruptcy without any reasonable ground of expectation of being able to pay it." This sum, contends Mr. Macassey, is in fact an aggregate of over 1200 separate debts, a contention which from the schedules attached to Mr. Alcock's affidavit of 13th November 1953 appears correct, although the Official Assignee seeks to justify the charge in the form as it stands as I shall presently show.

In 1925 in *Re Chops Low Ban Chuan and Chuan Bee ex parte Lim Eng Hoe*[1] it was stated by Barrett-Lennard J. sitting as a member of the Court of Appeal that the practice of the Courts in England in dealing with this type of matter was to require that the debts, which are alleged to have been contracted without reasonable expectation of being able to pay them, be specified so that the Court may apply its mind to all the circumstances under which they were contracted, and reference to the cited cases shows that is so. In the judgment I refer to Barrett-Lennard J. went on to express the opinion that "to charge a man of the type generally brought before us for his public examination with the commission of twenty-five offences against section 114 is apt to be embarrassing." Deane J. who was also a member of that Court said with reference to the same point: "The section strictly speaking seems to contemplate that the charge against the Debtor shall be with respect to one debt, and is in accordance with the principle that a man should be called upon to answer only one charge at a time in order that he may not be embarrassed in his defence." In a recent case *Re Mohamed Yusoff Meera Hussein & anor. trading as Federal Drug House*[2] Spenser Wilkinson J., after reviewing the authorities, held that "in proceedings under section 114(c) of the Bankruptcy Ordinance a particular debt or debts which are alleged to have been contracted without reasonable expectation of being able to pay should be specified in the charge."

Against this weight of authority the Official Assignee has been unable to refer me to any case to the contrary. Quite properly, I think, he did not seek to rely on the unsatisfactory report of *Poi Eng Lian v. The Official Assignee*[3]. The ground on which he sought to establish the validity of the charge was the practical one that, putting the matter in general terms, if the charge must be confined to specific debts a bankrupt might, if I may use the phrase, "get away with it", whereas if the identical debts formed the subject of a charge in the aggregate it could be established that he had contracted them without any reasonable ground of expectation of being able to pay them. At first sight this argument is not without plausibility. It does not seem logical that if, for example, in a state of insolvency I borrow $50,000 from A I may have to go to prison because it appears to the Judge that I contracted this debt without having any reasonable ground of expectation of being able to pay it, whereas if in exactly the same financial state I borrow $10,000 from each of A, B, C, D and E I may be able to show in respect of any of these debts of $10,000 considered separately that I had a reasonable ground of expectation of being able to pay it. But to appreciate the true position I think it is necessary to look further. The mischief, as I see it which section 114(b) is designed to punish, is not having got into debt, for a large or small amount, without any reasonable prospect of being able to become solvent again, but the wrong done to creditors by borrowing from them without any reasonable ground of expectation of being able to pay them back. And if this view is correct it clearly follows that it is not the state of indebtedness or even the process of becoming more deeply indebted as such with which the

sub-section in question is concerned, but it is the actual contracting of debts to which it applies. Once this is conceded it follows that it is individual transactions with creditors which must form the basis of charges under the sub-section, and it would be unfair that when the culpability or otherwise of the bankrupt depends on his conduct in respect of individual transactions he should be confronted in a single charge with a multiplicity of such transactions.

For these reasons it seems to me the Official Assignee's argument is not sustainable, but, apart from these reasons in so far as they are not covered by the cases I have cited, I respectfully agree with the authorities I have quoted, whether *Re Chops Low Ban Chuan and Chuan Bee etc.*[1] should be regarded as having the weight of a Court of Appeal decision on this point or not.

On these grounds I uphold Mr. Macassey's objection to the main charge.

Order accordingly.

Solicitors: *Battenberg & Talma.*

Re YEO JIN GUAT (No. 2)

[O. C. J. (Whitton J.) May 26, 1954]

[Singapore — Bankruptcy No. 85 of 1952]

Bankruptcy Ordinance (Cap. 45), ss. 114 and 128 — Motion to commit bankrupt — Procedure — Whether statement of affairs must be exhibited with affidavit — Bankruptcy Rules.

This was a motion to commit a bankrupt under the provisions of s. 114 of the Bankruptcy Ordinance. It was contended on behalf of the bankrupt that the statement of affairs of the bankrupt should have been exhibited to the affidavit of the Official Assignee.

Held: it is not mandatory on the Official Assignee to exhibit the statement of affairs to the affidavit.

Case referred to:—

(1) *Re Mohamed Yusoff Meera Hussein & Anor* (1954) M.L.J. 45.

BANKRUPTCY.

N. L. Macassey for the bankrupt.

W. G. Alcock, Official Assignee in person.

Cur. Adv. Vult.

Whitton J. : — The first of Mr. Macassey's further objections is that the statement of affairs should have been exhibited to the Affidavit and has not been. In support of this objection he relies on Rules, 14, 15, 16, 18 and 273 of the Bankruptcy Rules and on the recent Penang decision in *Re Mohamed Yusoff Meera Hussein & Anor.*[1]. Now the effect of Rule 273 as far as proceedings under section 114 are concerned is clearly that the Official Assignee must follow the normal procedure required in applications under the Bankruptcy Ordinance, that is he must make his application by motion supported by affidavit. The question to be decided now is whether this procedure makes it imperative for the Official Assignee to exhibit the statement of affairs to the affidavit. None of the Rules cited specifically say that he must. Mr. Macassey argues, however, that in the light of the decision in *Re Mohamed Yusoff Meera Hussein*[1] it is necessary for the statement of affairs to be exhibited. Even if it is conceded for the sake of argument that the same considerations apply in this connection to a statement of affairs as apply to the notes of a public examination, the failure to exhibit which occasioned that part of judgment in *Re Mohamed Yusoff Meera Hussein*[1] Mr. Macassey now relies on, it is important to observe that Spenser Wilkinson J. expressed the view that the question involved was not one of invalidating any proceedings but rather one whether there was evidence before the Court upon which it could act. To quote the relevant passage:—

> "Section 128 is very wide in its terms, but I do not think it really assists the Official Assignee in this case. It provides that no proceeding in bankruptcy shall be invalidated by any formal defect or irregularity. I do not think, however, that there is any question here of invalidating any proceedings; it is a question rather as to whether or not there was evidence before the Court upon which it could act."

The case cannot therefore be taken as authority for the proposition that the proceedings are invalidated — and that is the point I am concerned with at the moment — by omission to exhibit the notes of the public examination to the affidavit. I hold, accordingly that there is no authority before me which justifies a ruling that it is mandatory on the Official Assignee to exhibit the statement of affairs to the affidavit, and this objection must in my view fail. I do not wish, however, by this decision to be taken as considering it is not necessary if the Official Assignee proposes to rely on the statement of affairs in support of the motion for him to give due and adequate notice of the fact to the bankrupt.

Mr. Macassey's next objection is that the third schedule to the affidavit was not served on him until the 13th May, that is two days before the Motion came before the Court, and that, accordingly, Rule 16 of the Bankruptcy Rules was not complied with. It is not disputed that as the result of an error the schedule in question was not served until the 18th May, and that in fact what happened was that previously a document wrongly purporting to be the third schedule was served on Mr. Macassey. The Official Assignee submits that the matter can be cured